O/Transfer of Property/57

1951.

File No. 64/57

Legal Deptt.

G **BRANCH**

Subject:— Opinion on the Transfer of Property Act

O/Transfer of Property/57

File No. 64/51.

Gen. 194 c.

C O N T E N T S

Legal Department File No. O.Transfer of Property./51.

Sr.No.	R.I./O.NO.	Subject.	Pages.
		Opinions under the Transfer of Property Act.	
1.	G-446 24/9/51.	Re: Contract entered into with Government by certain rice Mill owner for Milling Government Paddy Mortagage bonds ~~exentended~~ executed by the Mill owner in favour of Govt. on account of amounts due to Government from him. Auction sale of mortgaged property for the recovery of-whether Government can bind at the auction sale.	1-2.

JPE.24/8/56.5c.

Transfer of property Act

Sections 58(b) and 67.

The mortgage is a simple mortgage as defined in section 58(b) of the Transfer of Property Act and the essential features of this mortgage are that possession is not delivered but the mortgagor binds himself to pay the mortgage money and agrees, expressly or impliedly, that in the event of his failing to pay according to his contract, the mortgagee shall have the right to cause the mortgage property to be sold and the sale proceeds applied in payment of the mortgage money. In the present case, the mortgagor has agreed that the amount due to Government should be recovered by sale of mortgage property but as the power to sale the mortgaged property without the intergention of the Court is not expressly conferred on the mortgagee by the mortgage deed, Government as mortgagor will not be able to hold an auction sale of property. It will be necessary to take recourse to a Court of law for a decree that the property be sold (section 67). Even at such a sale Government will not be able to buy the mortgage property for a man cannot sell to himself (p.48 of Mulla's Transfer of Property Act 3rd edn).

Id/- ....

Additional Secretary to Government.

U.R. to D.C.S.(Accounts), No.G-446,

dated the 24th September 1951

JPR.25/7/56.6c.